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**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding

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PP Docket No. 93-253

**OMNIPPOINT COMMUNICATIONS, INC.**  
**COMMENTS ON PETITIONS FOR RECONSIDERATION**

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## **SUMMARY**

Omnipoint urges the Commission to establish entrepreneur block eligibility rules that are both pragmatic in their approach to financing and vigilant in protecting the band for true entrepreneurs. This balance must promote investment in entrepreneurs, while at the same time preventing large telecommunications companies from gaining substantial profits or control of entrepreneur licenses. Omnipoint opposes proposals of petitioners that would over-compensate on either side of this balance, either by unduly restricting passive investment by large financiers or by allowing those same entities to dominate the entrepreneur's licenses. In general, Omnipoint supports the general approaches the Commission is pursuing. Omnipoint's proposals refine the eligibility criteria without compromising the Commission's objective of keeping the giant telecoms out of the entrepreneur's band. A modest relaxation of the attribution threshold for voting equity, from 15% to 19.99%, will likewise contribute to this balance.

In addition, Omnipoint strongly opposes the proposals of some petitioners that would significantly alter or eliminate the entrepreneur's band. Congress intended for the Commission to distribute licenses to a diversity of new telecommunications entrants, including small businesses, women, and minorities, and that is exactly what the entrepreneur's block can do. There is no need to confine eligibility exclusively to designated entity groups or to businesses so small that they may not survive in some competitive PCS markets. Further, the Commission should not adopt proposals that would permit in-region cellular operators to stifle competition by gaining a foothold in the entrepreneur's band.

Finally, Omnipoint opposes Pacific Bell Mobile Service's proposal to include the D and E BTA licenses in the auctions for the MTA licenses where the Commission has given final preference awards. The Commission's grouping of licenses will only add to the confusion of the first broadband PCS auction without providing any demonstrable benefits to the bidders. In addition, such an auction scheme would disadvantage entrepreneur bidders by excluding them

from the opportunity to combine their existing entrepreneur spectrum with an additional 10 MHz from the D and E licenses.

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**OMNIPPOINT COMMUNICATIONS, INC.  
COMMENTS ON PETITIONS FOR RECONSIDERATION**

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, files these comments to the petitions for reconsideration of the Fifth Report and Order in the above-referenced docket.<sup>1</sup>

**I. ELIGIBILITY REQUIREMENTS SHOULD BE SET AT LEVELS THAT  
WILL PROMOTE ENTRY OF VIABLE AND REAL PCS ENTREPRENEURS.**

To encourage the entry of viable entrepreneurs in broadband PCS, the Commission must allow sufficient flexibility for entities to acquire the financing to pay the high costs of the business. At the same time, the Commission must also ensure that those entities do not become simply a "front" for their financiers. Omnipoint finds that many of the proposals recommended by petitioners either (1) seriously underestimate the capital requirements of broadband PCS, or (2) permit participation of ineligible entities to such a degree that it is doubtful that the entrepreneur is really in control and has the responsibilities as well as the benefits of the license. Neither of these two reconsideration courses should be taken. Rather, the Commission should

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<sup>1</sup> Fifth Report and Order, PP Docket No. 93-253, FCC 94-178, 59 FR 37566 (July 22, 1994) ("Fifth Report and Order ").

refine its eligibility rules so that entrepreneur entities have the opportunity to be both successful and reasonably independent from their financiers.

**A. The \$125 Million Total Revenue/\$500 Million Assets Cap Should Apply Only To The Applicant And To Each Investor In The Applicant.**

The Commission's current \$125 gross revenue and \$500 million total assets cap (the "cap," or, the "revenue/assets cap") is intended to prevent large entities, and affiliates of large entities, from capturing entrepreneur-band licenses. Omnipoint's proposal of applying the revenue/assets cap to each investor in the applicant and to the applicant itself prohibits large telecommunications companies from using subsidiaries to do their bidding on the entrepreneur's block.<sup>2</sup> Under Omnipoint's proposal, the assets/revenues of the affiliates of the investors in the applicant are still attributable to the investors. Therefore, an entity that meets the revenue/asset cap cannot be used to hide a controlling big company; the assets/revenues of the big company would be added in when assessing the investor's eligibility to hold an attributable interest in the applicant.

Under Omnipoint's proposal, an entrepreneur could thus have as little as one or as many as six outside attributable investors, assuming the current 15% attribution standard, or from one to five under our recommendation of relaxing the threshold to 19.99%.<sup>3</sup> So long as each investor

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<sup>2</sup> Omnipoint Communications, Inc. Petition for Clarification and Reconsideration at 6 ("Omnipoint Petition"). Similarly, the National Association of Black Owned Broadcasters points out that there is no reason to aggregate the revenues/assets of a minority control group entity when that entity could have just as well avoided aggregation by forming a consortium. Petition For Reconsideration of the National Association of Black Owned Broadcasters, Inc. at 4-5 ("NABOB Petition"). We agree. Further, Omnipoint finds no reason to apply the aggregation rule to any entrepreneur -- whether minority owned or not. See Omnipoint Petition at 6. At a minimum, the non-aggregation exception should also apply to applicants with entirely "small business" investors. *Id.* at 9.

<sup>3</sup> Assuming that all investors hold the current minimum attributable interest (15%), the maximum number of investors is six (100% of the voting stock / 15% = 6.667). If the existing

(Footnote continued to next page)

meets the eligibility criteria, there is no need to aggregate or cumulate the total assets.<sup>4</sup> If aggregation is used, the only fair aggregation rule would be a weighted average or "multiplier" approach. Mathematically, however, the same eligibility result will be reached by simply not performing the aggregation on attributable investors, while still applying the caps to each investor individually. This investment flexibility is consistent with the range of opportunities available on the entrepreneur's band. For example, a 30 MHz Block C license is likely to require more financial backing to win, and build out, than the comparable 10 MHz Block F license. Also, licenses in metropolitan areas of the country are likely to require more capital than rural service area licenses. Adding attributable investors (each of whom meets the cap to prevent big company attributable participation) should be an option for entrepreneurs that need new capital. Because the number of attributable investors can vary only from one to five or six, the financial backing of any one applicant in a market will never dwarf that of any other auction participant. In fact, under Omnipoint's proposal the number of attributable investors is likely to be set by the predicted value of the auctioned license and the anticipated costs of building out the service area, not by the financial capabilities of one auction participant over another. Further, this proposal

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*(Footnote continued from previous page)*

investors hold an additional 10.1%, or if the Commission were to adopt Omnipoint's proposal for a 19.99% attribution threshold, then the number of investors will vary from one to five.

<sup>4</sup> A weighted average or "multiplier" approach is the only realistic way to calculate an aggregate cap value. Otherwise, just two investors could break the cap threshold even though neither investor is a large company and both have a combined total of only 30.1% of the voting equity. There is no real threat of abuse because an investor is not likely to contribute a significantly greater proportion of its assets or revenues to the applicant than of its equity ownership interest in the applicant. See Omnipoint Petition at 7-8.

does not compromise or dilute in any way the control group's de jure and de facto control requirements.<sup>5</sup>

Omnipoint disagrees with the USIMTA and USIPCA proposals to reduce the entrepreneur's-band revenues/assets cap and limit "small business" eligibility to entities with less than \$6 million in total revenues.<sup>6</sup> It is doubtful that an independent company with \$6 million in annual revenues could even pay the auction price for many licenses without receiving significant additional capital from larger entities.<sup>7</sup> After that initial license expenditure, there are marketing, construction, legal, interconnection, and system operations costs to be paid. A company with less than six million dollars in revenues typically cannot begin to afford these costs on its own. Even if it won the license and made the down payment, it could soon face either bankruptcy or the prospect of giving up control and ownership to a larger company (at the risk of losing its eligibility and its license).

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<sup>5</sup> Columbia PCS proposes that the control group be allowed to sell 25% of its equity so long as it retains 100% of the voting control of the applicant. Petition for Clarification of the FCC's Fifth Report and Order by Columbia PCS, Inc. at 2-4. Omnipoint endorses this financing mechanism so long as the outside investor is purely passive, i.e., the control group retains de facto control.

<sup>6</sup> Petition for Reconsideration of United States Interactive & Microwave Television Association and the United States Independent Personal Communications Association at 7 ("Entities that come anywhere close to having \$125 million in gross revenues and \$500 million in assets **are large companies** and should not be able to compete with small businesses owned by women and minorities."). This statement reflects a serious underestimate of the costs necessary to win a license at auction and launch a PCS system.

<sup>7</sup> For these same reasons, Omnipoint opposes NPPCA's proposal to reduce the revenue cap to \$75 million. Petition for Reconsideration of National Paging & Personal Communications Association at 6-7.



**B. Attribution Standards Should Be Only Slightly More Relaxed.**

The proper attribution standard must correctly balance two competing goals. First, the Commission must prevent ineligible companies, like the LECs or other telecom giants, from substantially owning and/or controlling "shams."<sup>8</sup> If such large telecom incumbents were allowed to set up "shams", the isolating purpose of the entrepreneur's band would be lost.<sup>9</sup> This problem advocates for a fairly low and inclusive attribution threshold. On the other hand, attribution thresholds that are set so low that they catch even passive equity financing will hurt new entrants, and defeat the ultimate goal of entry of viable new competitors. This advocates for a fairly high attribution threshold, one that would include only the most dominating investors. Omnipoint's proposals successfully balance these two concerns.

First, Omnipoint recommends a moderate relaxation of the voting equity attribution standard from 15% to just under 20% (e.g., 19.99%).<sup>10</sup> This aligns with the presumption of the GAAP rules that a company with 20% ownership in another company is an affiliate of the second company, which will make easier the Commission's job of monitoring and enforcing the

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<sup>8</sup> A licensee is a "sham" if it is controlled by an ineligible entity or if the ineligible entity is the primary beneficiary of the profits earned from the license.

<sup>9</sup> See, Fifth Report and Order, at ¶ 121 ("We agree that small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies, particularly large telephone, cellular and cable television companies.")

<sup>10</sup> Similarly, CTIA advocates a 20% or 25% threshold. See Petition for Reconsideration of the Cellular Telecommunication Industry Association, at 6 and n.15 ("CTIA Petition"). However, Omnipoint does not agree with CTIA's larger point concerning attribution changes specifically tailored to allow cellular companies that were of smaller size two years ago, but are now large, to be eligible for the entrepreneur's band. Omnipoint does not believe that cellular carriers should be eligible for the entrepreneur's band at all -- they are not the new entrants the band is meant to foster; they hold the monopolies that new entrants must break down. At the very least, there is absolutely no justification for a special exception for cellular companies that are currently too large to meet the revenues/assets cap.

eligibility rules. This relaxation will also allow more financing flexibility without any threat that an ineligible investor could either control the licensee or receive a predominant portion of the profits from the license. Omnipoint opposes Pacific Telecom Cellular's proposal for a 49.9% passive equity standard.<sup>11</sup> Allowing ineligible entities to control 49.9% of the voting equity has two negative consequences. First, allowing a large company, which finances the venture, to also hold nearly a majority of the voting equity (and perhaps negative control of the company) raises the risk of de facto control of the licensee by the ineligible entity. Second, even in the absence of control, an ineligible financier that also owns half of the company is likely to receive a preponderance of the profits from the license, which is contrary to the goal of rewarding entrepreneurs.

Second, the timing of eligibility must be further refined. The eligibility rules should specify that investors in the applicant must meet the caps at the time of filing the short-form application (FCC Form 175) and that subsequent attributable investors would have to meet the same caps at the time of their investment. This eliminates the problem in the current rules which effectively prevents the investors in the applicant from growing their own businesses, and the stifling effects on licensee investment that the current rules would bring.<sup>12</sup> At the same time, this rule change does not allow ineligible entities to control the entrepreneur's licenses. Omnipoint notes that several petitioners agree, and also objected to this prohibition against investors growing their businesses. As stated by Columbia PCS, "[a] 'snapshot' at the time of short-form should fix size measurements of a licensee and all attributable interests with

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11 Petition for Reconsideration of Pacific Telecom Cellular, Inc. at 4.

12 See Omnipoint Petition at 1 - 6.

continuing eligibility still properly impacted by new attributable investors."<sup>13</sup> As pointed out by Roland A. Hernandez, "[s]uch a rule would not only be against the public interest to encourage designated entities to grow and succeed, by whatever means, but would also be unnecessarily restrictive."<sup>14</sup>

## **II. THE COMMISSION SHOULD RETAIN THE BASIC GOALS OF THE ENTREPRENEUR'S BAND.**

Some petitioners request that the Commission make changes to the entrepreneur's band that would undermine its effectiveness in fostering opportunity for all truly independent new entrants. AIDE urges the Commission to exclude all those entities that do not meet the women or minority-owned or small business definitions. CTIA advocates for the private sale of up to 5 MHz of entrepreneur spectrum to the in-region cellular operators. Incredibly, GTE proposes that the Commission eliminate the entrepreneur's band entirely because such licensees pose a threat to in-region cellular incumbents. Omnipoint strongly opposes each of these proposals.

### **A. All Companies Under The Revenue/Assets Cap Should Be Able To Actively Participate On The Entrepreneur's Band.**

Omnipoint believes that the Entrepreneur's Band is an excellent way to give new entrants an opportunity to participate in PCS service. Eligibility based on the cap -- especially under the modification that Omnipoint proposes -- is a good proxy for determining which companies are new telecom entrants. The caps effectively prevent direct eligibility for giant telecom

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<sup>13</sup> Petition for Clarification of the FCC's Fifth Report and Order by Columbia PCS, Inc. at 4-5.

<sup>14</sup> Petition for Reconsideration of Roland A. Hernandez at 4. *See, also*, Petition for Reconsideration and Clarification of BET Holdings, Inc. at 17-18. ("A designated entity that meets the financial caps at the time it files its short-form application may, only a few years after receiving its license, exceed its entry-level position, but be in no better position to survive a discriminatory lending market.").

incumbents either because of the vast assets that those companies hold, like the local exchange carriers, or the near monopoly revenues (and profits) that they enjoy, like the cellular incumbents.

Omnipoint objects to AIDE's argument that the auction statute requires that the entrepreneur's band be set aside only for minorities, women, and "small businesses," defined as having less than \$40 million in revenues.<sup>15</sup> Specifically, AIDE proposes that all businesses between \$40 and \$125 million in revenues should be excluded from the Entrepreneur's Band. This was not Congress' mandate in the auction legislation. As the Commission explained in the Fifth Report and Order, one of the major reasons for the entrepreneur's band is that large telecom companies will undoubtedly value the spectrum differently than smaller companies.<sup>16</sup> Given the large telecom companies' massive resources and a defensive interest in limiting new entrants, it was incumbent on the Commission to exclude such entities from certain licenses so that smaller entities, especially new entrants and designated entities, can participate in PCS.<sup>17</sup> Congress directed the Commission to: "avoid[] excessive concentration of licenses and [] disseminat[e] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."<sup>18</sup> Obviously, Congress' choice of the word "including" means that the Commission is not limited to designing a licensing scheme that benefits exclusively small businesses, women, and minorities, as AIDE

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<sup>15</sup> Petition for Reconsideration of the Association of Independent Designated Entities of the Fifth Report and Order at 15. ("AIDE Petition").

<sup>16</sup> Fifth Report and Order at ¶ 121.

<sup>17</sup> Fifth Report and Order at ¶¶ 118-123.

<sup>18</sup> 47 U.S.C. § 309(j)(3)(B) (emphasis added). To further reduce the concentration of licenses, the Commission provided that no entity can hold more than 10% of the entrepreneur-block licenses. Fifth Report and Order at ¶ 170.

argues. Rather, Congress' overriding goal is the distribution of licenses to new entrants. The entrepreneur's block is a major step toward accomplishing these goals. For women, minorities, and small business entities, the Commission established additional preferences to help get the licenses into their hands.<sup>19</sup> An entrepreneur eligibility plan that effectively excludes large telecom incumbents, coupled with the cumulative preferences for designated entities, is consistent with the Congressional goals of the auction legislation.

Further, under Omnipoint's cap proposal, new entrants would be more able to fund designated entities. AIDE suggests that the Commission should either eliminate the passive equity rule or, conversely, allow up to 100% passive investment by giant telecoms.<sup>20</sup> Either alternative is a mistake. Investment by large companies, so long as it is carefully limited,<sup>21</sup> will be a good alternative for many designated entities; however, the rules should not allow a preponderance of the profits of an entrepreneur license to be funneled to large companies that own all or a disproportionate amount of the passive equity. Such a rule would mean that the large company investor ceases to be truly passive. Under Omnipoint's eligibility proposal, designated entities could look to investors that are, individually, under the cap as a new alternative for designated entity funding. At the same time, the benefits accrued to these

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<sup>19</sup> Further, the Commission specifically chose the Block C and Block F licenses for the entrepreneur's band to meet the concerns expressed by designated entity groups that advocated 30 MHz of spectrum and those groups that advocated smaller, less costly spectrum set-asides. *Id.* at ¶ 127.

<sup>20</sup> AIDE Petition at n.25.

<sup>21</sup> To carry out the objectives of the entrepreneur's band, these limits must not only ensure that there is no transfer of control to the large company, but also that the large company investor does not wind up with the predominant share of the profits of the license. After all, the entrepreneur's band is intended to invigorate and profit new entrants, not large companies with a majority of the equity, even if it is passive equity.

entrepreneur-investors are consistent with Congressional objectives of encouraging new entrant participation.

**B. The Sale of Entrepreneur-Band Spectrum To In-Region Cellular Incumbents Contravenes Public Policy.**

CTIA urges the Commission to allow entrepreneur licensees to sell up to 5 MHz of spectrum to in-region cellular operators.<sup>22</sup> Omnipoint opposes that proposal prior to the January, 2000 embargo period because it is contrary to the basic reasons for the entrepreneur's band, and it would only exacerbate in-region cellular operators' competitive advantage in the mobile services marketplace.

The Commission's underlying premise in the creation of the entrepreneur's band was to give smaller, new entrants the opportunity to become long-term PCS service providers, not spectrum brokers.

What makes CTIA's proposal even worse is that the entrepreneur spectrum would be transferred to the cellular incumbent. The Commission retained cellular eligibility restrictions, despite reconsideration petitions for their elimination, because "we remain convinced that restrictions on in-market cellular providers are necessary to achieve our goal of maximizing the number of new viable and vigorous competitors."<sup>23</sup> In support of its proposal, CTIA claims that these transfers are harmless because "[t]here is no risk of cellular misconduct in the absence of market power."<sup>24</sup> Even if one accepts arguendo the contention of no cellular misconduct, the Commission has already explained that this argument misses the point; "our goal in crafting

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<sup>22</sup> CTIA Petition at 2-4.

<sup>23</sup> Memorandum Opinion and Order, GEN Docket No. 90-314, FCC 94-144 at ¶ 103 (released June 13, 1994) ("Memorandum Opinion and Order").

<sup>24</sup> CTIA Petition at 4.

these rules should not be to prevent anti-competitive behavior which may or may not materialize, but rather, to promote competition."<sup>25</sup> CTIA's proposal effectively leads to a greater amount of spectrum held by incumbent licensees, which contradicts the express Congressional directive to encourage new competition through avoiding an excessive concentration of licenses.<sup>26</sup>

**C. The Entrepreneur's Band Does Not Unfairly Threaten  
In-Region Cellular Incumbents.**

Omnipoint strongly objects to GTE's assertion that the entrepreneur's block "seriously disadvantages cellular operators . . . in seeking to compete on a full and comparable basis in the PCS marketplace."<sup>27</sup>

GTE's premise makes no sense. The existing PCS rules, even without the entrepreneur's band, allow cellular operators to hold an additional 10 MHz license but do not permit the in-region cellular operator to capture a 30 MHz license.<sup>28</sup> Therefore, GTE is complaining about the fact that it is excluded from choosing the entrepreneur block F license, even though an in-region cellular operator can still bid for either the Block D or E licenses. We fail to see why the entrepreneur's band should be obliterated in order to provide in-region cellular with a choice of one-out-of-three instead of the current choice of one-out-of-two PCS licenses.

GTE's basic objection seems to be that the in-region cellular incumbents will be unable to control the competition on the entrepreneur's block. For example, GTE's "solutions" for promoting designated entity participation is essentially to allow the cellular industry to control

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<sup>25</sup> Memorandum Opinion and Order at ¶ 103.

<sup>26</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>27</sup> Petition for Partial Reconsideration of GTE Service Corporation at 4.

<sup>28</sup> 47 C.F.R. § 24.204(a).

designated entity "fronts." First, it advocates an end to all cellular eligibility restrictions.<sup>29</sup> Not only is this reconsideration request inappropriate under the Commission's rules,<sup>30</sup> it is contrary to one of the primary Congressional goals -- "avoiding excessive concentration of licenses and . . . disseminating licenses among a wide variety of licensees."<sup>31</sup> Then, GTE argues that, in lieu of excluding large companies from the entrepreneur's block, "the designated entities would be eligible for a sliding scale of bidding credits"<sup>32</sup> based on the level of control by ineligible entities (i.e., in-region cellular operators). Basically, GTE asks the Commission to institutionalize the "front" to permit any level of cellular control of designated-entity licenses; the degree of preferential treatment is determined by the cellular operator's level of investment. This scheme undermines the Congressional intent for long-term inclusion of independent designated-entity groups in the mobile communications industry. Ultimately, GTE's "sliding scale" will "slide" designated-entity licenses to the cellular operators.

Omnipoint encourages the Commission to retain the entrepreneur's band.

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<sup>29</sup> *Id.* at 6-8. GTE goes so far as to advocate for ignoring its existing cellular spectrum when calculating the spectrum cap: "[r]emoval of the Commission's limitations on cellular carrier participation in the PCS marketplace would permit cellular carriers to obtain 30 MHz of spectrum in any MTA in the country." *Id.* at 6.

<sup>30</sup> As GTE well knows, it was the Memorandum Opinion and Order, and not the Fifth Report and Order, that established the cellular-PCS cross-ownership restrictions and it is inappropriate for GTE to petition for reconsideration of those rules at this time. Petitions for reconsideration of that order were due on July 25, 1994. See Notices, 59 Fed. Reg. 41760 (August 15, 1994).

<sup>31</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>32</sup> GTE Petition at 10.



### **III. THE GROUPING OF LICENSES FOR AUCTION SHOULD NOT CHANGE BECAUSE OF THE PIONEER'S PREFERENCES.**

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Pacific Bell Mobile Services ("Pacific Bell") proposes that in areas where the Commission has awarded a final preference for the Block A MTA license (i.e., the New York, Washington/Baltimore, and the Southern California MTAs) the Commission should auction the Block D and E BTA licenses simultaneously in the first round of auctions with the Block B MTA license.<sup>33</sup> Omnipoint opposes this proposal for several reasons.

First, the Commission has already rejected Pacific Bell's argument. The Commission determined that, although some parties may possibly pursue a back-up strategy of two 10 MHz BTA licenses as a substitute for the MTA licenses, the D and E BTA licenses are not readily substitutable with the MTA licenses and so this "is not likely to be a widely used strategy."<sup>34</sup> Furthermore, the Commission concluded "that the benefits of administrative simplicity from auctioning license on blocks A and B separately from those on blocks D and E are likely to outweigh the possible loss of efficiency."<sup>35</sup> Pacific Bell's proposal to have simultaneous auctions of licenses, some with only MTAs and some with both MTAs and BTAs, can only add to the administrative confusion of the first-ever broadband PCS auction. Pacific Bell, and its indefatigable expert, completely fail to address the administrative costs of their plan. Moreover, Pacific Bell does not explain why the intermediate high bids of the multiple rounds of the Block B license, combined with the intermediate high bids from auctions of other MTA licenses, will not provide it with sufficient information to make rational bidding decisions.

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<sup>33</sup> Petition for Reconsideration and Clarification of Pacific Bell Mobile Services at 1 - 3 ("Pacific Bell Petition").

<sup>34</sup> Fifth Report and Order at ¶ 40.

<sup>35</sup> Id.

Second, Pacific Bell's proposal puts the entrepreneur's band auction winners at a strategic disadvantage. Under Pacific Bell's proposal, the D and E licenses for three territories will be auctioned prior to the entrepreneur's band auction and so, while the MTA winners would have the opportunity to combine their licenses with the D or E spectrum, the entrepreneur band winners will not have that same opportunity. This is likely to create an unfair spectrum advantage for the MTA licensees, and it weakens the strategic position of the entrepreneurs and designated entities.

Third, the whole premise of providing BTAs as a geographic alternative to MTAs is to allow operators to pick and choose how they combine smaller territories into "customized" geographic aggregations. Pacific Bell's proposal implies that this benefit should be eradicated for three areas of the country.

Fourth, one of the reasons for holding the Entrepreneur's Band auction after the MTAs but prior to the last BTAs is so that some of the major players may partner with (i.e., invest 15% to 20%) true entrepreneurs. Holding the auctions for the D and E licenses early in these territories could disadvantage entrepreneurs from raising capital.

Pacific Bell's alternative of auctioning all BTA licenses together is also an unsatisfactory solution.<sup>36</sup> It does not explain whether this BTA auction would occur before or after the entrepreneur's block license; if it occurs before then the entrepreneur players are disadvantaged, but if it occurs after then we do not see how the alleged efficiency gains for bidders in the MTA auction will be realized. In any event, an auction with all the BTAs will take the F licenses out of the entrepreneur's band and deprive designated entities of an opportunity for less costly participation in PCS through a 10 MHz license.

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<sup>36</sup> Pacific Bell Motion at n.5.

In sum, implementing Pacific Bell's proposals would cause far more problems than they solve.

**IV. CONCLUSION.**

For the reasons stated above, Omnipoint urges the Commission to retain the entrepreneur band and reformulate its eligibility rules so that independent PCS service providers can not only win licenses in the auction, but can obtain financing to construct and build out a PCS system in ways that maintain the entities character as independent PCS competitor.

Respectfully submitted,

OMNIPOINT COMMUNICATIONS, INC.

A handwritten signature in dark ink, appearing to read "Mark J. O'Connor", is written over a horizontal line.

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Date: September 9, 1994

## **CERTIFICATE OF SERVICE**

I, Mark J. O'Connor, hereby certify that on this 9th day of September, 1994, a copy of the attached "Omnipoint Communications, Inc. Comments on Petitions for Reconsideration" was served on the following parties via first-class U.S. mail, postage prepaid:

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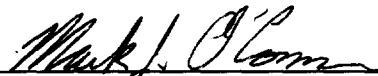
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A handwritten signature in cursive script, reading "Mark J. O'Connor", written over a horizontal line.

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